85-869

No.

Supreme Court, U.S.
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CLERK

IN THE

Supreme Court of the United States

October Term, 1985

MARTIN LIGHT,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

1. Whether or not the Trial Court's refusal to allow Petitioner to testify regarding the alleged motive of the federal agent to lie, which went to the heart of Petitioner's defense, denied him due process of law.

2. Once the Trial Court ruled that Petitioner could not testify to the alleged motive of the federal agent to lie because of Petitioner's complaint against a fellow officer, there is no showing that the testifying officer knew the officer against whom the complaint was made. Whether or not it was a denial of due process not to allow Petitioner time to secure evidence in accordance with the Court's ruling.

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PETITION FOR A WRIT OF CERTIORARI
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Petitioner, MARTIN LIGHT, was convicted in the United States District Court for the Eastern District of New York on February 21st, 1985 of Possession of approximately two grams of heroin with Intent to Distribute, in violation of 21 United States Code, Section 841(a)(1). He was sentenced to fifteen years in prison with a special parole term of five years and assessed $50.00 pursuant to 18 United States Code, Section 3013.

The case was tried to a jury from December 11th through December 14th, 1984, United States District Judge Eugene H. Nickerson presiding. Petitioner was also charged with two other counts, Conspiracy to Import and Importing Heroin, but the jury acquitted him of both charges. The Petitioner was remanded after the jury verdict and has been incarcerated ever since.

An appeal to the United States Court of Appeals for the Second Circuit was taken, but the Court affirmed Petitioner's conviction by order dated June 6th, 1985, a copy of which is annexed hereto.

JURISDICTION

The jurisdiction of the Court is invoked under Title 28 United States Code, Section 1251. The opinion of the United States Court of Appeals for the Second Circuit is annexed hereto.

CONSTITUTIONAL PROVISIONS INVOLVED

Whether Petitioner's rights under the due process clause of the United States Constitution were violated with respect to whether or not Petitioner had a far trial when the Court ruled in effect that Petitioner could not testify to a motive of the federal agent to lie, which constituted the heart of the Petitioner's defense.

STATUTE INVOLVED

21 U.S.C. Section 841 — Prohibited acts A - Unlawful Acts

(a) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally --

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance ...

Penalties

(b) Except as otherwise provided in Section 845 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1) (A) In the case of a controlled substance in schedule I or II which is a narcotic drug, such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of not more than $25,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, a fine of not more than $50,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment.

FACTS

The trial in this case began on Tuesday, December 11th, 1984 after a jury had been selected the previous day. The Petitioner, who was a practicing attorney, had just completed a five or six week trial the Friday before, and Mr. Lopez, his attorney, had completed a trial within a few days before that Friday. A motion for a short adjournment of the LIGHT trial was denied, and the case began after, pursuant to a defense motion, the jury was sequestered.

The essential case that the government presented involved a charge that on Saturday morning, July 14th, 1984,at about 8:30 A.M. the Petitioner went to the apartment of his friend, IOANNIS CHRISTOFIDIS, at 8797 25th Avenue, Brooklyn, New York. CHRISTOFIDIS had been arrested the night before at Kennedy Airport when he took delivery of approximately a kilo of heroin at a motel at Kennedy Airport from one, PIERRE SUCCAR, who had brought it in from overseas and had been arrested upon his arrival at Kennedy Airport. SUCCAR agreed to make a controlled delivery to the anticipated recipient of the narcotics, who turned out to be CHRISTOFIDIS, and he, in turn, agreed to complete the

transaction which involved the Petitioner coming to his apartment the next morning.

IOANNIS CHRSITOFIDIS was the main government witness who testified as to the transaction with LIGHT and discussed a previous transaction, but the jury apparently did not believe him because they acquitted LIGHT of the importation and conspiracy counts. There was a tape recording used of the conversation between the two men at the apartment, which turned out to be of questionable value because it was of extremely poor quality. The recording was played for the jury, but a significant factor was that although the jury deliberated for almost two days, and asked in excess of sixteen questions, they did not call for a replay of the tape recording once they began deliberations.

At any rate, when Petitioner left the apartment on that Saturday morning he was arrested in the street, and the testimony of the government agent was that he had four packets wrapped in tinfoil in a cabana set he was wearing, two of which contained narcotics and two of which were a sham substance. The Petitioner testified at the trial and contended that he did not have the narcotics on his person when he left the premises,

but that they were planted on him by the D.E.A. agent and that the case against him was a frame up. The Trial Court would not let the Petitioner testify to his contention that he was framed because he had recently made a complaint against another narcotics agent that the agent had stolen approximately $70,000. from a client of his upon the occasion of that client's arrest. That incident occurred a few weeks prior to Mr. LIGHT's arrest, and it was his contention that the motive of the D.E.A. to plant narcotics on him was to get back at him for the complaint he had made. That ruling of the Trial Court was the main point on the Petitioner's appeal.

IOANNIS CHRISTOFIDIS testified that he was known as "JOHN". His normal occupation was a furier, and he also testified that for about a year and a half he ran a Greek-Israeli nightclub known as Sirocco (47)*. The witness testified that he was arrested on Friday night, July 13th, 1984 at the Quality Motor Inn at Kennedy Airport when he went to pick up some heroin. He received a telephone call from Lebanon from one, HABIB RAHME, who told him to meet Mr. SUCCAR at the Quality Motor Inn to pick up heroin. The witness

* Numerical references are to Pages of the Trial Minutes.

testified that he was arrested at the Quality Motor Inn and charged with possession, inportation and conspiracy to import heroin; that he pleaded guilty to importation, and that he agreed to become a government witness in consideration of the other two charges being dropped and in consideration of the United States Attorney advising the sentencing Judge of his cooperation (49-50).

JOHN CHRISTOFIDIS testified that he was supposed to give the heroin that he was going to pick up to MARTIN LIGHT (51), who he had known for about ten years because LIGHT Had been a friend of his brother, DEMETRIOS, also known as "JIMMY".

He described a narcotics deal in May, 1984, involving one, BOB MARSHALL, and mentioned that he went to Greece where he met his brother, and then his testimony was directed to July, 1984, when he said that RAHME called him from Lebanon and told him that there would be a shipment of heroin coming to the United States (98). RAHME called a second time the night before CHRISTOFIDIS' arrest and said that the following day a Lebanese guy would arrive with a package of heroin and that the witness should sit by the telephone to wait for the telephone call (98). Friday, July 13th, the witness went

to work and said that he got a telephone call that morning from Lebanon (99). The caller told the witness that the man with the heroin had arrived, and later on in the day the man called back and gave him the name PIERRE SUCCAR and said that PIERRE was staying at the Quality Motor Inn in Room 207. JOHN was directed to call PIERRE and was told that PIERRE had some contracts with him (99). The witness said he called Mr. LIGHT's office, but LIGHT was not in, and then he said that he received a call from a person known as ARI SAN, the owner of the Sirocco Supper Club (A8)*. JOHN then spoke to PIERRE. PIERRE told him that he needed $1,000. in cash and JOHN said he did not have the money (A8). PIERRE told him he needed the money for expenses and JOHN said he would do his best to try to raise it. JOHN said that was his purpose in calling LIGHT, to try to get the money (A9). JOHN then left work and went to the nightclub and asked ARI SAN for it. He told ARI SAN he needed the money to make the payments on his brother's car because the payments were in arrears (A9). ARI SAN did not have the money but said he might have it later that night as money came in. He told ARI SAN that he needed it to pay the Lebanese guy who was in town with drugs (A9).

*"A" references are to Pages of the Appendix in the Court of Appeals.

JOHN went back to his apartment in Brooklyn and called PIERRE on the telephone. LIGHT called him at home and the witness told the Petitioner that he needed $1,000. to pay the man. The witness said that LIGHT said, "Don't talk on the telephone, I will see you later (A10). Petitioner came to JOHN's house that evening with his son and the two men went into the bedroom, leaving DAVID and JOHN's girlfriend in the living room (A11). LIGHT gave him $1,000. in twenties, and JOHN testified that LIGHT told him when he got it that he should call LIGHT and he would come by at 9:00 the following morning, which was Saturday. JOHN told him he had to go to work Saturday and he wouldn't be there, and he told LIGHT that he would put two samples in an envelope, seal it and leave it with his girlfriend (106). JOHN said his girlfriend did not know anything about what was happening (107). That evening JOHN went to the Quality Motor Inn and left his girlfriend, DEBBIE, downstairs in the car. He knocked on the door to Room 207 and PIERRE answered. PIERRE showed him the briefcase sitting on the dresser and JOHN gave him $700. He testified that he kept $300. for himself. PIERRE counted the money and gave JOHN the briefcase. CHRISTOFIDIS went to the car and was arrested in the parking lot of the motel (108). He

testified that he thereafter decided to cooperate with the government and that his cooperation was voluntary. He said no one forced him to cooperate, no one kicked him or hurt him in any way. He said, however, that when the agents grabbed him to arrest him and force him to the ground, he hit his forehead on the concrete wall, but it did not require medical treatment (A12). He admitted talking to his brother in Greece on the telephone and telling him he was beaten up, and he also admitted telling ARI SAN the same thing (A12). He said that the reason he said he had been beaten up was that he was embarrassed to become an informant against MARTIN LIGHT (A13). At any rate, after CHRISTOFIDIS was arrested he went back to his apartment and gave certain papers to the agents, two pistols and the sample of heroin that ARI SAN had given him (A13). He said that when he was back in his apartment he received a call from LIGHT (A14). The telephone rang, and Agent ST. HILAIRE picked up the telephone, and apparently the caller thought it was a wrong number. Two seconds later, the telephone rang again and LIGHT was on the phone and asked if he had gocten the contracts. JOHN said he had and LIGHT said he would be up the next morning (A15). He didn't tell the agent that the caller was MARTIN LIGHT. Later that

night they went back to Kennedy Airport (A15), and he decided at that time to cooperate with the agents. They went back to the apartment where he received a telephone call from ARI SAN (113), and from HABIB RAHME from Lebanon.

The next morning LIGHT arrived at the apartment and two agents were there, one in the bedroom where JOHN's girlfriend was sleeping and one in the living room closet (A16-17). When LIGHT entered the apartment he was surprised to see CHRISTOFIDIS because JOHN had said he was going to work, but he told LIGHT he had fallen asleep. LIGHT looked at JOHN's head and asked what happened to him, and JOHN said he fell down and hurt himself. He told the Petitioner he got whacked the night before, which meant that he had gotten high on drugs (A18). They sat down on the living room couch for a few minutes and then walked over to the dining room where JOHN opened a briefcase containing several bags of heroin amounting to about a half kilo of heroin and the rest of the substance being something other than heroin (A18-19). Apparently the other substance was some sort of sham substance which had been provided by the agents. LIGHT looked at the contents of the briefcase and remarked that it didn't look like a kilo and JOHN said it was 1,000 plus some grams (A19). LIGHT remarked that the

packages were not the same color, and JOHN said he didn't look at it, he just picked up the briefcase. JOHN testified that they opened the bag and LIGHT put some samples into tinfoil, about a gram in each sample, but it should be noted that there were no fingerprints of LIGHT on the tinfoil or on the plastic bag in which the heroin had been contained (A20). JOHN said he had agreed to give LIGHT two samples, but LIGHT asked for two more, so four samples were made (A20). LIGHT put the samples in his pocket. LIGHT said he could not do it until after the weekend. JOHN said that LIGHT also told him to put some extra cutting in there, manitol, for some extra money for the two of them (A21). LIGHT took the samples and left the apartment. All during the time of this encounter there was a tape recording operating in a briefcase under the couch in the living room (A22). The tape recording was of very poor quality, but JOHN testified that he had listened to it, that it was a fair and accurate recording of the conversation between the two men (137). A transcript was offered which contained many gaps and inaccurate references and the tape was then played for the jury which utilized the transcript as an aid.

CHRISTOFIDIS was asked whether he would testify against his brother, who was now an indicted co-defendant in the case by virtue of the superceding indictment, and JOHN said he would refuse. The witness clearly testified that he would testify against ARI SAN but would absolutely refuse to testify against his own brother (229-230).

The next witness was D.E.A. Agent, GARY ST. HILAIRE, who was in on the arrests of SUCCAR and CHRISTOFIDIS. He testified that when SUCCAR was arrested he repacked the attache case with a sham substance which was flour and with real heroin (A34). He described the arrest of CHRISTOFIDIS, taking him to his apartment where they obtained some weapons and a quantity of heroin, and he recalled two telephone calls coming into the apartment while he was there (A35-36). Agent ST. HILAIRE took the first call and the caller said, "Johnny did you get it?" The witness said, "I'm sorry." He thought it was a wrong number, but he could not recognize the voice of the person who called. There was a second call. JOHN answered. JOHN indicated that the caller was to be the recipient of the heroin and JOHN told him that he could pick up the samples at 9:00 O'clock (267). They went back to the D.E.A. office and later returned to the apartment where the tape recorder was placed in the

attache case. He also was present when the other two telephone calls were recorded, one from Lebanon and one with ARI SAN. Ultimately, agents took up a position outside the building, he was in a moving surveillance with another agent outside and two agents stayed in the apartment (271-272). He saw LIGHT get out of his car and enter the building on Saturday, morning, July 14, 1984 (272). He was wearing shorts and a sports shirt, and the next thing he observed was LIGHT exiting the building some twenty minutes later (A37). The witness and Agent RANDALL walked toward LIGHT and arrested him as he was opening the door to his car (A38). He searched LIGHT and took the contents out of LIGHT's left hand pocket. He handed the contents to Agent BRYSON, and it was discovered that the items included an address book that was seized from CHRISTOFIDIS the night before (A39).

On cross examination, defense counsel asked the agent whether he worked out of Kennedy and was familiar with a group of agents known as the Special K5 Group, and the witness replied that he did not know of their existence (A40). He denied knowing certain agents and detectives, including a Detective Jose Luis Guzman. He said that he never worked with them on any cases (A41). Agent ST. HILAIRE admitted, however, that when he testi-

fied that the caller in JOHN's apartment the night before asked whether he had gotten it, that that fact was not included in the report that the agent prepared right after the incident. In fact, the report merely said that the caller asked for JOHNNY and was told it was the wrong number (A42). It did not include JOHN telling the caller that he could come up and pick up the samples the next morning. He also said that no one ever told him to get MARTIN LIGHT on this case (284).

JOHN BRYSON, another D.E.A. agent, testified that he participated in the arrest of LIGHT and took custody of all the personal items found on his person (A43). He testified that there were four small folded packets of tinfoil (A44). There were some quantities of powder in each packet, two of which contained heroin and two of which contained flour (A45-46). LIGHT had been arrested by Agents ST. HILAIRE and RANDALL and they had the contents of LIGHT's pocket out by the time he arrived (A47). He believed that he saw, however, that they had come from LIGHT's left hand pocket (A48). There was also a quantity of currency and some kleenex (348). There was nothing in his right hand pocket. This witness also testified that he did not know certain agents with the D.E.A. Also, he knew nothing of Group K5 in the New York Task Force (A49). He also said that he did not know Jose

Luis Guzman (A49).

Prior to LIGHT testifying there was a discussion with regard to the type of cross examination the United States Attorney should be permitted to go into, and that LIGHT's testimony would be that the agents were out to get him. Counsel also offered to have the defense give the Court a preview of his testimony out of the presence of the jury (A50), but that was not taken advantage of.

After the lunch break, the United States Attorney advised the Court that she had an application to limit testimony on behalf of LIGHT concerning any vendetta by the government, on the grounds that there was no evidence of any misconduct or impropriety of the agents adduced (A51). In fact, the prosecutor suggested that if LIGHT was going to testify to some vendetta that there should be a proffer before the testimony was offered (A51). Defense counsel indicated that there would be an issue in this regard, that in June 1984, LIGHT had made a complaint against other members assigned to the D.E.A., that a report was made to an Assistant United States Attorney in the Eastern District, and that as a result LIGHT was forewarned that the agents would get even with him (A52). Counsel suggested that the trier of facts could give it as much weight as would be deemed applicable under the circumstances, but that

the testimony was relevant and should be received (A53). The prosecutor suggested that she knew the incident that counsel was talking about which involved a trial that LIGHT had before Judge Platt, and a claim was made that in the course of a money seizure there was money missing and that the agents were corrupt and had taken the money (A54). The contention also was going to be that someone told LIGHT after the incident that they would get even with him, or words to that effect, and that the person allegedly was a D.E.A. agent (A55). Counsel also told the Court that he believed that there was an investigation into that entire matter that was then being handled by an Assistant United States Attorney at that time (A56). The Court indicated that it was going to allow the defense to make a proffer at that point (A56), and counsel told the Court that LIGHT was prepared to name the agent who made the statement (A57). The Court said it was rather inclined to admit that evidence and let the jury draw whatever inference they might want. Counsel then identified the agent complained of as Detective Guzman, a New York City police officer who worked on the joint D.E.A./ New York Narcotics Task Force (A57). The prosecutor argued that the agents who testified said that they did not know Guzman and the Court ruled that the testimony was too remote and LIGHT could not testify to the incident

(A58). Counsel then reiterated the fact that LIGHT wanted to testify to the fact that the threat against him was made two or three weeks prior to his arrest and that the person who made it was a person associated with the D.E.A. (A58). Counsel argued that LIGHT should be able to relay his facts to the jury and that the jury should be permitted to consider it in light of his defense. In addition, counsel argued that there was a sufficient showing already in the evidence that there was a motive to fabricate against LIGHT and that he should be allowed to buttress that argument in his testimony (A59). The Court denied the application as not geing relevant under Rule 403.

MARTIN LIGHT then testified. He said that he was an attorney, a former Assistant District Attorney, and that he had experience in the Narcotics Bureau in the Brooklyn District Attorney's Office (#84). He was a trial lawyer and had handled several large narcotics cases in the Eastern District and other cases. In the course of his practice he had occasion to frequently cross examine members of the D.E.A. (386).

LIGHT denied ever having had anything to do with any conspiracy to deal in narcotics, ever receiving any samples in the past and he denied all of CHRISTOFIDIS' testimony.

LIGHT testified that he had received a call from JOHN CHRISTOFIDIS on Friday, July 13, 1984, and that JOHN asked him for $1,000.00 because he was behind on payments on his brother's car (398). LIGHT told him to ask ARI SAN, but when JOHN said that ARI SAN didn't have it, LIGHT agreed to lend him the money if he would give it back the next morning. He went to JOHN's apartment with his son and gave JOHN the $1,000.00 and took JOHN's gold ring as security (A61). That was the ring that JOHN identified as his when he testified (A61). LIGHT was supposed to come back the next morning to get the money back because he was going away with his family to New Jersey. JOHN promised to get the money from ARI SAN because Friday night was a big night at the club. LIGHT said that he had reservations to go away for the weekend to the Marriott Hotel (400). JOHN suggested that LIGHT call him later that evening to see if there was a problem with ARI SAN and to determine whether he had picked up the money (401). LIGHT said he telephoned JOHN. Someone else answered, so he just hung up (402). He tried again, JOHN answered the phone and LIGHT asked whether he should stop by in the morning. JOHN said that he should (402).

The next morning LIGHT went to CHRISTOFIDIS' apartment at about 8:30 in the morning. He was wearing shorts

and a sports shirt. He went up to the fifth floor and entered the apartment (403). The house was very dark and LIGHT said to CHRISTOFIDIS, "What's wrong with you, you look all beat up." (A62). He also asked JOHN, What happened, you look beat up, you can't walk, you're stumbling." JOHN told him he had taken quaaludes and had been whacked out from drugs. He had fallen and hit the table. They went over to the dining room area and JOHN opened an attache case and showed him different bags of drugs (406). They were in transparent bags and he knew that the substances were drugs (407). He could not tell if the substance was cocaine or heroin, and he also testified that JOHN was trying to get him into a conversation (407).

LIGHT said that JOHN might have asked him whether or not he knew how to get rid of the drugs, and he told him that he was crazy. JOHN told him he got it from a young kid or a young guy (408). JOHN got a knife and was opening the bags. LIGHT asked him whether he was going to snort it and JOHN said no. (409). LIGHT said that JOHN made the tinfoil packets. LIGHT specifically said that CHRISTOFIDIS did not give him these packets before he left the apartment (411). LIGHT left the apartment after getting a promise that he would have the money after the weekend. LIGHT told JOHN to make

sure he had the money by Monday night (412). LIGHT said he never offered to get rid of the heroin (412). He was arrested and was told, "Don't move, you are under arrest, possession of contraband." He denied that there was any contraband in the pocket of his shorts (A66-67). He specifically said that at the time of his arrest he did not have possession of the four packets that had been marked in evidence (415).

On cross examination, LIGHT reiterated the fact that he did not have the heroin samples on his person when he was arrested (A68-69).

The defense rested and the government did not present any rebuttal evidence. Both sides summed up and after the Court's charge the case was given to the jury. The jury returned the verdict December 14th at about 4:00 P.M., acquitted LIGHT of the first two counts and convicted him of the possession count.

POINT I

THE COURT ERRED IN NOT ALLOWING PETITIONER TO TESTIFY REGARDING THE ALLEGED MOTIVE OF THE FEDERAL AGENT TO LIE. THE COURT'S RULING WAS CRITICAL TO THE PETITIONER'S DEFENSE AND DENIED HIM DUE PROCESS OF LAW. AFTER THE COURT'S RULING, THE FAILURE TO ADJOURN THE TRIAL TO ALLOW PETITIONER TIME TO COMPLY WITH THE COURT'S RULING WAS A FURTHER DEPRIVATION OF PETITIONER'S RIGHTS.

This Petition is based upon a single erroneous ruling which Petitioner claims deprived him of his entire defense and critically affected the outcome of the trial.

The government's main witness, IOANNIS CHRISTOFIDIS, testified to a series of narcotics transactions with LIGHT, but the jury obviously chose not the believe his testimony because it acquitted Petitioner of the conspiracy and importation charges and convicted him of the possession charge. The entire case obviously turned upon the question of the credibility of MARTIN LIGHT that he left CHRISTOFIDIS' apartment without any heroin samples on his person as against the credibility of the D.E.A. agent who said that he found two tinfoil packets of heroin in LIGHT's pocket. The case basically involved LIGHT's word against one agent, because the second agent who testified did not actually see the tinfoil packets in LIGHT's pocket, but said that the first agent who

searched LIGHT handed them to him. Thus, rather than the possesion count standing or falling upon the testimony of CHRISTOFIDIS alone, the corroborative testimony of the agent was also involved, so that his veracity was critical.

LIGHT took the position that he did not have possession of the narcotics samples, and it is obvious that any normal person sitting on a jury would discount LIGHT's testimony unless he was made aware of a reason for the D.E.A. agent to fabricate. The government was aware that LIGHT intended to testify that there was a vendetta against him before he took the witness stand, because they made an application to limit testimony concerning any such vendetta (A53). The Court was also advised by the prosecutor that the Court should have a proffer as to what facts were intended to be presented by the defense in LIGHT's testimony, so that everyone was aware that he intended to testify with regard to the reasons for hostility, bias and fabrication on the part of the agents. LIGHT's counsel advised the Court that in June 1984, a few weeks before LIGHT's arrest, he made a complaint against members assigned to the D.E.A., that the complaint was made to an Assistant United States Attorney in the very office that was prosecuting LIGHT, and that LIGHT had received threats that the D.E.A. would get even with him, or words to that effect (A52).

The threats were not remote in time because they were made only a few weeks before, and counsel argued that the trier of facts should have the right to consider these facts in evaluating the testimony of the D.E.A. agents. In other words, the evidence should be admissible, but the jury would have the right to give it whatever weight it would deem appropriate under the circumstances (A53). The prosecutor indicated that she knew what LIGHT was going to testify to, and was familiar with the incident, which involved a trial that LIGHT was involved in before another Judge, in which he raised a claim that in the course of a money seizure there was money missing, and the argument was that the agents were corrupt and had taken the money (A54). In addition, it was contended that someone came to LIGHT after the case and told him that they would get even with him (A55). The threat was made, according to counsel as he understood it, by an agent of the D.E.A. who could be identified by LIGHT (A55). Counsel also said that there was an investigation then being conducted by the United States Attorney's Office and LIGHT was prepared to name the agent as one, Detective Guzman, a New York City police officer who was attached to the joint D.E.A./New York Police Department Task Force (A57). Judge Nickerson said that his inclination was to admit the evidence and let the jury draw whatever inference it wanted (A57).

The Court then changed its mind and said that it was too remote and that LIGHT was precluded to testify to these events when he took the witness stand (A58).

To complete the record, counsel made the statement that LIGHT intended to testify that apparently two to three weeks before his arrest the events took place wherein he complained that Detective Guzman stole money from his client, and that LIGHT should have the opportunity to give his version of the events so that the jury could consider that situation in light of the defense in this case. Petitioner also contends that there was a sufficient showing already in evidence and that there was a motive to fabricate against him, and that he should be allowed to testify to that effect. The Court denied the motion under Rule 403 (A59).

The D.E.A. is a small organization working in New York, and the fact that LIGHT had made a complaint and had been threatened subsequent to making the complaint should have been made known to the jury, which could give it whatever weight it wished.

In United States v. Abel, 469 U.S ___, 83 L.Ed. 2d 450, 105 S.Ct.___(1984), a case that involved witnesses who were members of a gang in prison having a certain philosophy with regard to other witnesses, the Supreme Court decided that a defendant always has

the right to show bias or hostility on the part of a witness testifying against him because such factors would make the facts to which the witness testified less probable in the eyes of the jury than it would be without such testimony. The Court went on to add that the presence of bias is always relevant because the jury has historically been entitled to be aware of all evidence which could bear on the accuracy and truth of a witness' testimony. Thus, in Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed. 2d 347 (1974), the Court decided that the confrontation clause of the Sixth Amendment entitled the defendant to show bias on the part of a prosecution witness. It has always been the law that a defendant in his desire to show bias is not restricted to cross examination, but can even introduce extrinsic evidence and that a preliminary inquiry of a biased witness would not even be necessary. United States v. James, 609 F.2d 36 (2nd Cir. 1979), cert. denied, 445 U.S. 905; United States v. Frankenthal, 582 F.2d 1102 (7th Cir. 1978); United States v. Harvey, 547 F.2d 720 (2nd Cir. 1976); United States v. Robinson, 530 F.2d 1087 (D.C. Cir. 1976); Fisch on Evidence, 2nd Ed. Sections 465-467; Richardson on Evidence, Sections 504-505.

In this case, it must be remembered that LIGHT sought to do less than introduce extrinsic evidence, but

sought merely by his own testimony to discuss the complaint he had made against the narcotics officer.

In United States v. Hall, 653 F.2d 1002 (5th Cir. 1981), the Court held that the exposure of possible motivation for false testimony is a fundamental right of cross examination, and in United States v. James, supra, the Second Circuit held that bias of a witness was not a collateral issue, that extrinsic evidence could be admissible to prove that a witness had a motive to testify falsely, and that the right of a defendant to present such evidence was fundamental. See, also: United States v. Harvey, supra; United States v. Blackwood, 456 F.2d 526 (2nd Cir. 1972), cert. denied, 409 U.S. 863, 93 S.Ct. 154, 34 L.Ed. 2d 110 (1972); United States v. Lester, 248 F.2d 329, 334 (2nd Cir. 1957).

This Court has always held that partiality of a witness is subject to explanation and the right to discredit such a witness is important, and it has taken the position that established safeguards of our legal system make it absolutely imperative that a defendant have a right to test the credibility of witnesses against him. Davis v. Alaska, supra; United States v. Hoffa, 385 U.S. 293, 87 S.Ct. 408, 17 L.Ed.2d 374 (1966).

The State Courts have also held with regard to this question that extrinsic evidence of a motive to lie

on the part of a witness is admissible and not collateral. People v. McIntyre, 71 A.D.2d 956,959-960, 419 N.Y.S. 2d 1006 (2nd Dept. 1979); People v. Bruno, 77 A.D.2d 922, 431 N.Y.S. 106 (2nd Dept. 1980); People v. Stridiron, 33 N.Y.2d 287 (1972); Brink v. Stratton, 176 N.Y. 150 (1903); People v. Buchanan, 57 A.D.2d 686, 393 N.Y.S. 2d 810 (3rd Dept. 1977).

In this case, the ruling of the Trial Court deprived Petitioner of his entire defense. The case turned on a single factual question: either LIGHT had the narcotics samples when he left the apartment or they were planted on him. The tape recording introduced was practically inaudible, the jury did not ask for it to be replayed and the evidence of the accomplice, CHRISTOFIDIS, was apparently discounted by the jury.

We suggest that not only was the Court's ruling in error, but that the ruling amounted to the most critical question of law in the entire case. Once LIGHT was unable to testify to his contentions as to why the government agent had lied, the jury was faced with a situation in which it could only see one side of the story. Had the evidence been admissible, the prosecutor could have always argued that the jury should give it little weight. It should also be mentioned that it was the government just before LIGHT was about to testify who made an application to preclude his testimony on that issue, so that

after the question of admissibility was decided, there was no time for subpoenaes to be issued or for proof to be obtained that the agent who testified against LIGHT knew the agent against whom LIGHT made the complaint. The government's position has been that there was no showing that the agents knew each other, but, of course, since the trial started almost immediately after LIGHT and his counsel had just completed other trials, it was physically impossible to investigate whether or not the agents actually knew each other or had worked together in the past. It may very well be that the defense could have shown a connection, and it is suggested that LIGHT should have been given every opportunity to do so. To state that Petitioner did not show a factual connection between the two officers, which Petitioner did not know he had to show, and then to require him to continue his case immediately, without any chance to secure evidence to demonstrate the connection, was a denial of Petitioner's right to a fair trial. It is probable that a connection could easily have been shown because after all, Agent ST. HILAIRE and Detective GUZMAN, who both worked out of the airport,also have all of their cases in the Eastern of New York. Thus, they are always in the same area of the United States Attorney's Office dealing with the same Assistant United States Attorneys, dealing with the

same laboratory and there are many opportunities for their paths to cross. It is inconceivable that members of such a small unit did not know each other.

Under all of the circumstances and based upon all of the evidence adduced at the trial below, we suggest that the Court's ruling not only was in error, but it is reasonable to assume that the ruling affected the outcome of the case. The right to present evidence of hostility, bias or motive to lie on the part of a government witness includes the right of a defendant to present his defense. Webb v. Texas, 409 U.S. 95, 93 S.Ct. 351, 34 L.Ed.2d 330 (1972); United States v. Armstrong, 621 F.2d 951 (9th Cir. 1980); Washington v. Texas, 388 U.S. 14, 87 S.Ct. 1920 (1967); Davis v. Alaska, supra.

CONCLUSION

THE PETITION OF CERTIORARI SHOULD BE GRANTED.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS

For The

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 6th day of June, one thousand nine hundred and eighty-five.

Present:

HONORABLE WILFRED FEINBERG,
Chief Judge

HONORABLE THOMAS J. MESKILL,

HONORABLE JON O. NEWMAN,
Circuit Judges

- X

UNITED STATES OF AMERICA,

Appellee,

-against- 85-1073

MARTIN LIGHT,

Appellant.

- X

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgment of said district court is AFFIRMED.

Appellant asserts that the district court in refusing to allow him to testify about an incident, which, he alleges, would have shown that the Drug Enforcement Administration (DEA) agents who testified against him had a motive to lie. He contends that the exclusion of the testimony violated his Sixth Amendment confrontation rights.

We disagree. Appellant's proferred testimony was based on a very attenuated connection between the agents who arrested him and a New York City detective against whom appellant had lodged a complaint of corruption shortly before his arrest. The only link asserted by appellant other than proximity in time between the two events is that the detective belongs to a joint drug enforcement task force that includes DEA agents. The district judge concluded that the connection between the proposed testimony and the issues at trial was too remote, and excluded the testimony. We see no grounds to reverse the district judge's discretionary decision, and therefore affirm the judgment below.

WILFRED FEINBERG, Chief Judge

THOMAS J. MESKILL

JON O. NEWMAN
Circuit Judges